

Assembly Bill No. 2944

Passed the Assembly August 31, 2008

Chief Clerk of the Assembly

Passed the Senate August 29, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 309 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2944, Leno. Corporations: director's duties.

Under existing law, a director of a corporation is required to perform the duties of a director in good faith and in a manner that the director believes to be in the best interests of the corporation and its shareholders, and with the care of an ordinarily prudent person.

This bill would, until January 1, 2015, specify that, in considering the best interests of the corporation and its shareholders, the board of directors, committees of the board, and individual directors of a domestic corporation may consider specified factors, including, among others, the effect the corporation's actions would have on the prospects for potential growth and on the economy of the state and nation. The bill would enact related provisions relative to the consideration of these factors, as specified, and the duties of the board of directors, committees of the board, and individual directors of a domestic corporation. The bill would also, until January 1, 2015, provide that an act of the board of directors, a committee of the board, or an individual director of a domestic corporation shall be presumed to be in the best interests of the corporation, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 309 of the Corporations Code is amended to read:

309. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner that the director believes to be in the best interests of the corporation and its shareholders and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters that the director believes to be within the person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, where the director believes the committee to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles of incorporation to the extent provided in paragraph (10) of subdivision (a) of Section 204.

(d) In performing the duties of their respective positions, the board of directors, committees of the board, and individual directors of a domestic corporation may, in considering the best interests of the corporation and its shareholders, consider, without limitation, the following factors and any other appropriate factors consistent with the business judgment rule, to the extent they deem them appropriate:

(1) The long-term and the short-term interests of the corporation and its shareholders.

(2) The effects that the corporation's actions may have in the short term or in the long term upon any of the following:

(A) The prospects for potential growth, development, productivity, and profitability of the corporation.

(B) The economy of the state and the nation.

(C) The corporation's employees, suppliers, customers, and creditors.

(D) Community and societal considerations.

(E) The environment.

(e) (1) Nothing in this section shall create any duties owed by any director to any person or entity to consider or afford any particular weight to any interest or factor described in subdivision (d) or to abrogate any duty of the directors, either statutory or recognized by common law or court decisions, including, but not limited to, those duties set forth in subdivision (a).

(2) The duty of the board of directors, committees of the board, and individual directors under subdivisions (a) and (b) is solely to the domestic corporation and may be enforced directly by the corporation or may be enforced by a shareholder or member by an action in the right of the corporation, and may not be enforced directly by a shareholder, member, or by any other person or group.

(3) Notwithstanding paragraph (2), subdivision (d) shall not impose upon the board of directors, committees of the board, and individual directors any legal or equitable duties, obligations or liabilities, or create any right or cause of action against, or basis for standing to sue, the board of directors, committees of the board, and individual directors.

(f) (1) Absent breach of fiduciary duty, lack of good faith, or self-dealing, any act of the board of directors, a committee of the board, or an individual director of a domestic corporation shall be presumed to be in the best interests of the corporation.

(2) Any act of the board of directors, a committee of the board, or an individual director of a domestic corporation relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested directors have assented shall be presumed to satisfy the standard set forth in this section, unless the disinterested directors did not assent to the act in good faith after reasonable investigation. Provided the articles of incorporation have been amended pursuant to Section 152, this paragraph shall become operative on the date the amendment was approved by the outstanding shares.

(g) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 2. Section 309 is added to the Corporations Code, to read:

309. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon

which the director may serve, in good faith, in a manner that the director believes to be in the best interests of the corporation and its shareholders and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters that the director believes to be within the person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, where the director believes the committee to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles to the extent provided in paragraph (10) of subdivision (a) of Section 204.

(d) This section shall become operative on January 1, 2015.

Approved _____, 2008

Governor